

1 ROESLER

2 (Discussion off the record.)

3 Q. Do you know what images of Marilyn
4 Monroe we're talking about?

5 A. No.

6 MR. MINCH: Objection.

7 Q. Do you know if those images of
8 Marilyn Monroe were protected by copyright or
9 not?

10 MR. MINCH: Objection.

11 A. No.

12 Q. Did you undertake to find out the
13 answer to that question prior to your
14 deposition today?

15 MR. MINCH: Objection.

16 A. No.

17 Q. You said earlier that presumably
18 the deal between the Shaw Family and Frieze was
19 for the copyright -- licensing of the
20 copyright; correct?

21 A. Correct.

22 Q. But you don't know that's the case,
23 do you?

24 MR. MINCH: Objection.

25 A. I mean, I can't make a definitive

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2 statement on that. That's why I said
3 presumably.

4 Q. You didn't see the agreement
5 between the Shaw Family and Frieze, did you?

6 MR. MINCH: Objection.

7 A. No.

8 (Discussion off the record.)

9 Q. So we're clear, the MMLLC had not
10 offered Frieze -- did Frieze come to MMLLC and
11 request permission to license any images of
12 Marilyn Monroe?

13 MR. MINCH: Objection.

14 A. No.

15 Q. So I'm going to ask you a couple of
16 obvious questions. I'd like to get it for the
17 record. With respect to images of Marilyn
18 Monroe, Frieze -- there was never a deal
19 memorandum between CMG, MMLLC, and Frieze for
20 the licensing of images of Marilyn Monroe;
21 correct?

22 MR. MINCH: Objection.

23 A. Correct.

24 Q. And there was never any formalized
25 license agreement memorializing the terms of

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2 any agreement for Frieze to license images of
3 Marilyn Monroe; isn't that right?

4 MR. MINCH: Objection.

5 A. Correct.

6 Q. Now, to refresh my recollection,
7 what representations did you say that the Shaw
8 Family had made to Frieze regarding images of
9 Marilyn Monroe, if any?

10 MR. MINCH: Objection.

11 A. That they didn't need any license
12 to proceed with their program of -- that
13 involved Marilyn Monroe from Marilyn Monroe
14 LLC.

15 Q. And in particular, you identified
16 the trademarks.

17 A. The trademarks or right of
18 publicity.

19 Q. So you're saying that Larry Shaw
20 said to someone at Frieze that they didn't need
21 a right of publicity for Marilyn Monroe?

22 MR. MINCH: Objection.

23 A. You're -- Larry was Dolce &
24 Gabbana. I'm not sure who Frieze was, whether
25 it was Bradford or --

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2 Q. So you don't know whether it was
3 Bradford, Meta Stevens, Edith Marcus, or Larry
4 Shaw that made this purported representation to
5 Frieze that they didn't need a right of
6 publicity from the estate?

7 MR. MINCH: Objection.

8 MS. COLBATH: Objection.

9 A. That's correct.

10 MR. SERBAGI: Did you hear the
11 question? You just walked in the room.

12 (Discussion off the record.)

13 Q. Do you know when this purported
14 representation was made to Frieze?

15 MR. MINCH: Objection.

16 A. I'd say that was early on in the
17 litigation, so I'd say three years ago.

18 Q. Do you know who at Frieze the
19 representation was made to?

20 A. No.

21 Q. How did you find -- first find out
22 about this purported representation?

23 MR. MINCH: Objection.

24 A. Well, it was discussed for a number
25 of months. The whole situation was discussed

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2 internally and with counsel.

3 Q. The question is how did you first
4 find out about the purported representation
5 that one of the entities we've discussed
6 represented to Frieze that they didn't need a
7 right of publicity for Marilyn Monroe?

8 MR. MINCH: Objection.

9 MS. COLBATH: Objection.

10 A. I don't recall how I first found
11 out.

12 Q. You don't know if it was by
13 telephone?

14 A. No.

15 MR. MINCH: Objection.

16 Q. You don't know if it was by letter?

17 MR. MINCH: Objection.

18 A. No.

19 Q. You don't know who it was?

20 MR. MINCH: Objection.

21 A. No.

22 (Discussion off the record.)

23 Q. You don't know who from my clients
24 made the representation?

25 MR. MINCH: Objection.

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2 A. I do not.

3 Q. You don't know how they made the
4 representation?

5 MR. MINCH: Objection.

6 A. I do not.

7 Q. You don't know when they made the
8 representation?

9 MR. MINCH: Objection.

10 A. You mean the year?

11 Q. Yes.

12 A. 2005.

13 Q. Do you know if it was prior to
14 Judge McMann's decision in this case --

15 MR. MINCH: Objection.

16 Q. -- ruling that the estate of
17 Marilyn Monroe has no right of publicity?

18 MR. MINCH: Objection.

19 MS. COLBATH: Objection.

20 A. You said it was 2005. So that
21 ruling was 2007.

22 Q. So it was before.

23 A. It was before.

24 (Discussion off the record.)

25 THE VIDEOGRAPHER: We are now off

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the record at approximately 2:14 p.m.

(The luncheon recess was taken at
2:14 p.m.)

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2 A F T E R N O O N S E S S I O N

3 2:40 p.m.

4 M A R K R O E S L E R ,

5 having been previously duly sworn by the
6 notary, was examined and testified
7 further as follows:

8 THE VIDEOGRAPHER: This is tape 3
9 in the deposition of Mark Roesler. We
10 are now on the record at approximately
11 2:40 p.m.

12 EXAMINATION RESUMED BY MR. SERBAGI:

13 Q. Good afternoon, Mr. Roesler.

14 A. Good afternoon.

15 Q. Now, you were speaking about
16 representations that Mr. Shaw purportedly made
17 to Frieze, prior to the break; correct?

18 A. Correct.

19 Q. And you stated that Larry had
20 represented to someone at Frieze that they
21 didn't need to go to the estate for right of
22 publicity; correct?

23 A. No. That's not correct. What we
24 talked about was that the Larry discussion was
25 with Dolce & Gabbana.

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2 Q. I apologize.

3 A. And we weren't sure who discussion
4 with Frieze was, whether it was Bradford or
5 Shaws or whoever.

6 Q. Right. At least with respect to
7 the right of publicity, whatever representation
8 somebody at Shaw or Bradford made -- let me
9 restate that. So we're clear, sometime in --
10 to refresh my recollection, when was that
11 statement that somebody at Shaw made to Frieze,
12 in what year, approximately, that you're
13 referring to?

14 MR. MINCH: Do you want to have
15 your answer read back to you?

16 THE WITNESS: I don't think so. I
17 think I remember what it was.

18 A. It was when the litigation first
19 started. So around 2005.

20 Q. And one of my clients made the
21 representation that Frieze didn't need a right
22 of publicity from the estate of Marilyn Monroe,
23 MMLLC; correct?

24 MR. MINCH: Objection.

25 MS. COLBATH: Objection.

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2 Q. That's what you're saying?

3 A. No. What I said was that Frieze
4 was told that they did not need to secure any
5 approvals other than from Bradford/Shaw. That
6 it wasn't necessary to clear any other rights
7 with the Marilyn Monroe estate.

8 Q. At least with respect to the right
9 of publicity, whoever made that statement was
10 correct, weren't they?

11 MS. COLBATH: Objection.

12 MR. MINCH: Objection.

13 Q. That they didn't need at the time
14 clearance from MMLLC or CMG for a right of
15 publicity?

16 MR. MINCH: Objection.

17 MS. COLBATH: Objection.

18 A. That was a pretty compound
19 question. Do you want to repeat that? My
20 short answer is no, that's not correct. But if
21 you want to go back and dissect that a bit.

22 Q. Judge McMann ruled in May of 2005
23 that are MMLLC does not have a right of
24 publicity --

25 A. 2007.

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2 Q. Excuse me. -- May of 2007 that
3 MMLLC does not have right of publicity in
4 Marilyn Monroe; correct?

5 MS. COLBATH: Objection.

6 A. That is -- there was a ruling
7 something to that effect, yes.

8 Q. And soon after that decision, Judge
9 Morrow in California made a similar ruling;
10 correct?

11 MR. MINCH: Objection.

12 A. A similar ruling, yes.

13 Q. So it turned out that the
14 representation from someone at the Shaw Family
15 or Bradford to Frieze that they didn't need
16 permission to -- in terms of having a right of
17 publicity, they didn't need to license a right
18 of publicity from MMLLC or CMG, that was a
19 correct representation at the time, wasn't it?

20 MR. MINCH: Objection.

21 MS. COLBATH: Objection.

22 A. Well, my answer to that was no. My
23 answer to that was no.

24 Q. What's the basis for saying no?

25 MR. MINCH: Objection.

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2 MS. COLBATH: Objection.

3 A. Well, a couple comments about what
4 you just said. Number one, you said with
5 respect to the right of publicity. And our
6 position has always been that Marilyn Monroe
7 LLC has a portfolio of intellectual property
8 rights that we discussed earlier, including
9 whatever rights exist with respect to the right
10 of publicity is one of those assets that they
11 possess.

12 So jumping back ahead to your
13 comment on Frieze, no. We think that the
14 actions by Frieze were, at a minimum, a clear
15 infringement on the trademark rights of Marilyn
16 Monroe LLC.

17 Q. I'm speaking only about the right
18 of publicity now, putting aside the trademark
19 issue.

20 MR. MINCH: Objection.

21 A. If you want to rephrase your
22 question to hone in on that, I'll -- or however
23 you want to do that. We can go back to it.

24 Q. With respect to Frieze, you're
25 saying that somebody -- one of my clients made

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2 a representation to someone at Frieze that they
3 didn't need the right to license a right of
4 publicity among other rights from MMLLC and
5 CMG.

6 A. Okay. Let's stop there if we
7 could, because I don't know exactly what the
8 extent of those representations were between
9 your client and Frieze and whether those
10 representations simply stopped at the
11 discussion on the right of publicity, or
12 included all rights of Marilyn Monroe, or what.
13 So I can't definitively answer that question.

14 Q. Do you know whether one of my
15 clients, Shaw Family, or Bradford, Meta
16 Stevens, or Edith Marcus ever told Frieze that
17 they don't need to license a right of publicity
18 from CMG or MMLLC?

19 MR. MINCH: Objection.

20 A. I don't know specifically what they
21 said. No. I don't have specific knowledge.

22 Q. So we're clear, you don't have
23 specific knowledge what my clients -- I'm
24 referring to my clients collectively as
25 Bradford, Meta Stevens, Edith Marcus and Shaw

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2 Family Archives. For the remainder of this
3 deposition you'll understand what I mean when I
4 say "my clients"?

5 A. Yes, I will.

6 Q. To be clear, putting aside the
7 right of publicity issue which you've just
8 testified about, can you tell me the specifics
9 of what my clients purportedly said to Frieze
10 regarding the other purported intellectual
11 property in possession of MMLLC for Marilyn
12 Monroe?

13 MR. MINCH: Objection.

14 A. I can't tell you the specifics of
15 the conversation that any of your clients had
16 with Frieze. I can only tell you that the end
17 result was Frieze telling us that they were
18 assured that they did not need to secure any
19 rights from Marilyn Monroe LLC, and therefore
20 would continue to sell the products as they
21 were, and would not -- would not negotiate any
22 type of license or whatever with Marilyn Monroe
23 LLC.

24 And we had an existing relationship
25 with Frieze with some of our other clients,

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2 some of our other celebrity clients who we
3 were -- had an open dialogue with Frieze.

4 Q. And --

5 A. It was not a contentious dialogue,
6 I guess is the best way do describe it.

7 Q. Okay. Now, you mentioned that
8 Frieze, you know what the ultimate result is,
9 that Frieze came to a determination that they
10 didn't need to license any intellectual
11 property from MMLLC. My question is: Do you
12 know how they came to that determination?

13 MR. MINCH: Objection.

14 A. No.

15 Q. Do you know whether that
16 determination was based on advice of their
17 legal counsel?

18 MR. MINCH: Objection.

19 A. I'm sure it involved their legal
20 counsel. But I don't know the specifics of
21 that. I don't know the specifics.

22 Q. But you don't know one way or the
23 other --

24 A. No.

25 MR. MINCH: Objection.

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2 MS. COLBATH: Objection.

3 Q. -- whether Frieze's decision not to
4 license intellectual property from MMLLC was
5 based on advice of counsel or not.

6 MR. MINCH: Objection.

7 Q. Correct?

8 A. That's correct.

9 Q. You don't know whether the Friezes'
10 decision not to proceed with licensing
11 intellectual property relating to Marilyn
12 Monroe from MMLLC was a result of their own
13 in-house analysis from their business people;
14 correct?

15 MR. MINCH: Objection.

16 MS. COLBATH: Objection.

17 A. Well, I mean, that wouldn't be
18 logical. That assumption wouldn't be logical.
19 I mean, this was in their legal department, and
20 it was involving the legalities, not the -- not
21 whether or not they would proceed with the
22 program, because they were doing the program
23 with Marilyn.

24 Q. I guess in essence what I'm getting
25 at, finally, to make the record clear, you

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2 don't know how they came to the determination
3 to make the decision whether to proceed with
4 MMLLC licensing Marilyn Monroe-related
5 intellectual property. You don't know how they
6 came to that decision, do you?

7 MR. MINCH: Objection.

8 MS. COLBATH: Objection.

9 A. That is correct.

10 Q. Again, getting back to the initial
11 question, was representations that you've
12 stated that my clients have made to licensees
13 or potential licensees of MMLLC regarding
14 Marilyn Monroe images, you've mentioned Frieze
15 and you've mentioned Dolce & Gabbana. Sitting
16 here today, can you tell me any others where
17 Shaw Family or any of my clients represented
18 that they didn't need to go to the estate to
19 license Marilyn Monroe-related intellectual
20 property?

21 MR. MINCH: Objection.

22 A. Well, sometimes I can remember the
23 products, but I can't remember the names. I
24 mean, I know there were different products out
25 there. Like there was some ladies' underwear.

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2 There was some -- there was a bath care line.
3 And there was a party good line. But I can't
4 remember the companies. The names.

5 Q. So the record is clear, you can't,
6 sitting here today, tell me the name of any
7 company other than Frieze and Dolce & Gabbana
8 where my clients represented to them that they
9 didn't need to go to MMLLC or CMG to license
10 Monroe-related intellectual property, whether
11 that be right of publicity or any other
12 intellectual property that the estate
13 purportedly has; correct?

14 MR. MINCH: Objection.

15 A. Sitting here today with the
16 information that I have, I could not. But my
17 office could, or I could -- we have access to
18 that information. But I don't have a specific
19 recollection of all the names.

20 Q. Well -- or any other name other
21 than the ones you've just mentioned; right?

22 A. That's correct.

23 Q. Now, with respect to these various
24 products that you're speaking of, ladies'
25 underwear, I think you said, bath care line,

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2 party care line, what did you mean by that,
3 specific products? What were you referring to
4 when you spoke about products?

5 MS. COLBATH: Objection.

6 A. Companies that -- companies that
7 were either engaged in discussions or were
8 doing programs with Bradford that reached the
9 conclusion that they did not need to work with
10 Marilyn Monroe LLC.

11 Q. Can you identify the nature of any
12 specific communication to any specific
13 company -- let me rephrase that. You testified
14 earlier you can't remember any other companies
15 other than the two you've mentioned, Frieze and
16 Dolce & Gabbana; correct?

17 A. Correct.

18 MR. MINCH: Objection.

19 MS. COLBATH: Objection.

20 Q. Can you recall, sitting here today,
21 any specific representation that was made by
22 any of my clients referring to any of the
23 companies that own the products that you've
24 referred to here regarding their necessity to
25 go to MMLLC to license Marilyn Monroe

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2 intellectual property?

3 MR. MINCH: Objection.

4 A. I cannot.

5 Q. Not only can you not remember the
6 nature of the representation, but I'm sure
7 you're not -- it would follow that you're not
8 able to recall, sitting here today, who in
9 particular of my clients, whether it was Meta
10 Stevens, Edith Marcus, Larry Shaw, Bradford,
11 made these purported representations; is that
12 right?

13 MR. MINCH: Objection.

14 MS. COLBATH: Objection.

15 A. That's correct.

16 Q. And with respect to these
17 additional products that you're talking about,
18 ladies' underwear, bath care line, party care
19 line, you don't know, sitting here today,
20 whether any of my clients asserted to the
21 owners of these products that we had -- meaning
22 my clients -- valid copyrights that would have
23 precluded -- valid copyrights that would
24 have -- let me rephrase.

25 With respect to these additional

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2 products we're talking about and the
3 representations that my clients purportedly
4 made, do you know what images -- particular
5 images of Marilyn Monroe my clients purportedly
6 were speaking of when they had these
7 representations -- when they made these
8 representations to these other companies?

9 MS. COLBATH: Objection.

10 MR. MINCH: Objection.

11 A. I'm sorry, Chris.

12 Q. I'll try to rephrase. What I'm
13 getting at is that you're asserting that
14 certain representations were made by my clients
15 regarding rights to images of Marilyn Monroe
16 that my clients may have had, purportedly,
17 copyrights.

18 A. Correct.

19 Q. I'm asking can you identify,
20 sitting here today, the copyrights at issue of
21 Marilyn Monroe?

22 A. No, I cannot.

23 Q. Or images of the Marilyn Monroe
24 issue?

25 A. I cannot.

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2 Q. So we're absolutely clear for the
3 record, other than Frieze and Dolce & Gabbana,
4 sitting here today, you can't identify any
5 specific licenses or potential licenses of
6 MMLLC that either any of my clients purportedly
7 made representations to regarding rights to
8 images of Marilyn Monroe?

9 MR. MINCH: Objection.

10 MS. COLBATH: Objection.

11 A. Not without specific information
12 from my office, that's correct. I can't,
13 sitting here today, at this exact moment,
14 give -- recall any of the specifics.

15 Q. Did you undertake to ascertain that
16 information before you came to the deposition
17 today?

18 MR. MINCH: Objection.

19 A. No. Not that specific
20 information.

21 Q. What information did you attempt to
22 ascertain?

23 MR. MINCH: Objection.

24 A. Well, I work in this every day, so
25 I have a wide -- a decent memory, not as good

1 ROESLER

2 as it used to be, so I'm testifying as to what
3 I know and what I recall.

4 Q. I understand.

5 A. I mean, to ask me for names and
6 specifics on companies and who said what,
7 that's hard for me to truthfully tell you. I
8 don't have that information at my fingertips.

9 Q. Sure.

10 A. Or in my mind.

11 Q. Has MMLLC, through CMG, ever
12 licensed any of the images of Marilyn Monroe --
13 well, let me rephrase. CMG doesn't license
14 actual images of Marilyn Monroe. It licenses
15 intellectual property; is that correct?

16 MS. COLBATH: Objection.

17 A. Will you clarify what the
18 difference is? I mean, images are -- I mean,
19 if an image is protected by a copyright, that's
20 an intellectual property right that you could
21 license. And what Bradford and Shaw folks do
22 is, they license the intellectual property
23 rights of the images they own.

24 Q. Right. But Shaw also has images of
25 Marilyn Monroe, actual prints, in their

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2 collection, don't they?

3 MS. COLBATH: Objection.

4 A. Yes.

5 Q. So they license actual images at
6 times; right?

7 A. I'm confused what you mean by
8 "license images." You mean sell images.
9 Specifically sell limited edition prints?

10 Q. Let me rephrase the question. With
11 respect to Marilyn Monroe, what MMLLC does is
12 license -- they have in the past and to date --
13 license a right of publicity in Marilyn Monroe;
14 correct?

15 MS. COLBATH: Objection.

16 A. That is not correct. That's
17 partially -- partially correct, but standing on
18 its own would be incorrect.

19 Q. Why don't you clarify it for me.

20 A. Marilyn Monroe LLC has a portfolio
21 of intellectual property rights. Those include
22 certain copyrights. They have both film
23 footage and images that they own the copyrights
24 to. They have artwork, illustrations that they
25 own the copyrights to. They have various

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2 trademarks around the world for Marilyn Monroe.
3 They have the right of publicity when and where
4 it exists. They have common-law trademark
5 rights. Common-law right of publicity rights.
6 They have Lanham Act rights. So there's this
7 portfolio of intellectual property rights that
8 they -- that the entity owns.

9 Q. And licenses.

10 A. And licenses. Correct.

11 Q. Has MMLLC, through CMG, ever
12 licensed any of the images of Marilyn Monroe
13 that appear in the Rizzoli book?

14 MR. MINCH: Objection.

15 A. I don't --

16 MS. COLBATH: Objection.

17 A. I don't know. I don't know. I
18 don't know.

19 Q. Did you undertake to find the
20 answer to that question prior to the submission
21 of the Third Amended Complaint in this action?

22 MR. MINCH: Objection.

23 A. I mean, there's -- I guess you'd
24 have to hone in on your question just a little
25 more, because there's two aspects to that.

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2 Aspect number one would be, do any licensees
3 use those images in the Rizzoli book on their
4 own because they believe that they are in the
5 public domain?

6 And part two of that would be, do
7 we actually take those images and send them out
8 to people and encourage them to use those
9 images that are -- that were taken by Sam Shaw
10 and contained in the Rizzoli book?

11 Would you agree with me, those are
12 the two aspects of that? I'm just trying to
13 answer it as efficiently and correctly as --

14 Q. I guess -- let me rephrase the
15 question, then. I'll take that. When I say
16 "I'll take that," I'll leave that testimony and
17 go on to another -- rephrase the question I was
18 trying to ask.

19 A. Okay.

20 Q. Has MMLLC ever licensed to any of
21 its licensees, through CMG or anybody else, to
22 your knowledge, any of the images that appear
23 in the Rizzoli book?

24 MR. MINCH: Objection.

25 MS. COLBATH: Objection.

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2 A. Will you define the word "license"?
3 Your definition of the word "license."

4 Q. What's your definition of the word
5 "license"?

6 MR. MINCH: Objection.

7 MS. COLBATH: Objection.

8 A. Well, to answer that, I think what
9 I'll do is tell you what I think you -- what I
10 hear you saying on that question, is: Have we
11 ever provided images and charged a fee for
12 images that were taken by the photographer Sam
13 Shaw and contained in the Rizzoli book? Is
14 that the question?

15 Q. That is the question.

16 A. Okay. Not to my knowledge.

17 Q. Sitting here today, do you know of
18 any instances where MMLLC or CMG made offers to
19 specific licensees to use images of Marilyn
20 Monroe taken by Sam Shaw that are contained in
21 the Rizzoli book?

22 MS. COLBATH: Objection.

23 MR. MINCH: Objection.

24 A. Not to my knowledge. Not to my
25 knowledge.

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2 Q. Do you know of any particular
3 company, sitting here today, that desired to
4 use, in connection with the sale of goods and
5 services, images of Marilyn Monroe taken by Sam
6 Shaw that are contained in the Rizzoli book?

7 MS. COLBATH: Could I have that
8 read back again?

9 Q. Let me rephrase it. It's not
10 complete. Let me add on to the end, "and
11 didn't do so because they were fearful of being
12 sued by the Shaw Family or any of my clients?"

13 MR. SERBAGI: You can read the
14 whole thing back.

15 (The record was read as requested.)

16 MR. MINCH: Objection.

17 MS. COLBATH: Objection.

18 A. No.

19 MR. SERBAGI: Let's mark as Roesler
20 Exhibit 3 a book entitled "Marilyn
21 Monroe, the Life, the Myth."

22 (Roesler Exhibit 3 for
23 identification, book, "Marilyn Monroe,
24 the Life, the Myth.")

25 (Discussion off the record.)

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2 Q. So the record is clear, I'm not
3 going to ask you any other questions about that
4 book other than when we're talking about the
5 Rizzoli book today. Is that what is marked as
6 Roesler 3 in fact the Rizzoli book?

7 A. It is.

8 Q. Thank you.

9 (Discussion off the record.)

10 Q. Has MMLLC or CMG ever licensed any
11 of the images of Marilyn Monroe contained in
12 what is referred to in this litigation as the
13 Ballantine book, otherwise known as "Marilyn
14 Monroe As the Girl"?

15 MR. MINCH: Objection.

16 A. I don't have specific knowledge of
17 that.

18 Q. Do you know, sitting here today,
19 whether MMLLC or CMG ever engaged in any
20 negotiations with parties that desired to
21 license from MMLLC, CMG images of Marilyn
22 Monroe that are contained in the Ballantine
23 book?

24 MR. MINCH: Objection.

25 THE WITNESS: Do you mind repeating

1 ROESLER

2 that question?

3 (The pending question was read
4 back.)

5 A. I don't have any specific knowledge
6 of that.

7 Q. Sitting here today, do you know
8 whether any company or individual or entity
9 ever declined the opportunity to use images of
10 Marilyn Monroe that are contained in the
11 Ballantine book because they were fearful of
12 being sued by the Shaw Family?

13 MR. MINCH: Objection.

14 MS. COLBATH: Objection.

15 Q. Or any of my clients?

16 A. I do not.

17 (Discussion off the record.)

18 Q. I'd like to talk about the Third
19 Amended Complaint a little bit with you, Mr.
20 Roesler.

21 A. Okay.

22 Q. What role did CMG play in filing
23 this litigation against my clients in Indiana?

24 MR. MINCH: Objection.

25 MS. COLBATH: Objection.

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2 A. I'm sorry. You've confused me
3 because you said you're talking about the Third
4 Amended Complaint.

5 Q. You are correct. Let me rephrase
6 the question. I'm trying to get a little
7 background. Let's put aside the Third Amended
8 Complaint for now. Thank you for clarifying
9 that.

10 A. Put the Third Amended Complaint
11 aside?

12 Q. Put it aside. We'll get to it.
13 What role did CMG play in the
14 decision to sue my clients in Indiana for a
15 violation of the right of publicity and various
16 other criminal statutes and other causes of
17 action?

18 MR. MINCH: Objection.

19 A. We brought the problem to the
20 attention of Marilyn Monroe LLC and their
21 counsel, Gibson Dunn & Crutcher, because of
22 the -- the aggressive marketing that was being
23 undertaken by the Bradford Group and the
24 position that there was no -- that the Marilyn
25 Monroe LLC did not have any enforceable

1 ROESLER

2 intellectual property rights.

3 MR. SERBAGI: I'd like to mark as
4 Roesler Exhibit 4 a document entitled
5 "Complaint for Damages and Injunctive
6 Relief."

7 (Roesler Exhibit 4 for
8 identification, document, "Complaint for
9 Damages and Injunctive Relief.")

10 Q. What is this document?

11 A. This was the initial action that
12 was filed.

13 Q. When you say "the initial action
14 that was filed," you mean in Indiana for CMG
15 and MMLLC as plaintiffs against Bradford
16 Licensing and Shaw Family Archives?

17 MR. MINCH: Objection.

18 A. That's correct.

19 Q. Turn to the last page. It's
20 signed. Do you see there the signature of
21 Jonathan Pollock?

22 A. I do.

23 Q. And do you have any reason to
24 believe that this was not the actual complaint
25 that was filed in the Indiana action?

1 ROESLER

2 A. I do not.

3 Q. And what role did CMG play in the
4 decision, the final decision, to file suit
5 against my clients?

6 MR. MINCH: Objection.

7 MS. COLBATH: Objection.

8 Q. Was that a decision primarily made
9 by MMLLC? Or by CMG?

10 MR. MINCH: Objection.

11 A. It was a collective decision.

12 Q. Did you provide your thoughts on
13 the issue to MMLLC?

14 A. I did.

15 Q. What were your thoughts on the
16 issue?

17 MR. MINCH: Objection.

18 MS. COLBATH: Objection.

19 A. My recommendation was that we file
20 an action.

21 Q. And why did you make that
22 recommendation?

23 MR. MINCH: Objection.

24 A. As I stated earlier, because of
25 what was happening with Bradford in the

ROESLER

marketplace.

Q. Because my clients were interfering with -- what you believed was interfering with MMLLC and CMG's ability to license images of Marilyn Monroe?

MS. COLBATH: Objection.

MR. MINCH: Objection.

A. Well, no, I would not characterize it that way.

Q. How would you characterize it?

MR. MINCH: Objection.

MS. COLBATH: Objection.

MR. SERBAGI: How would you characterize it is an objectionable question?

MR. MINCH: I'm still --

Q. Let's go on. You answer.

A. I would characterize it as an interference with the licensing, marketing, protecting of intellectual property rights of Marilyn Monroe LLC.

Q. Do you regret having filed this action against my clients?

MR. MINCH: Objection.

1 ROESLER

2 MS. COLBATH: Objection.

3 MR. MINCH: Objection.

4 Q. Pleadings. I meant to say
5 pleadings.

6 A. It's entirely possible pleadings
7 are filed without me personally seeing them.

8 Q. Even a complaint?

9 MR. MINCH: Objection.

10 A. Possible. Yes.

11 Q. So it's possible that you would
12 have permitted your attorneys to file this
13 second amended complaint without you reviewing
14 it and checking its factual accuracy?

15 MR. MINCH: Objection.

16 A. It's possible.

17 Q. Turning to Count 9, declaration of
18 Mr. Shaw's copyrights. Is there any specific
19 work identified that is owned by my clients
20 that you are asserting is in the public domain
21 in Count 9?

22 MR. MINCH: Objection.

23 MS. COLBATH: Could you reread
24 that?

25 (The pending question was read

1 ROESLER

2 back.)

3 MS. COLBATH: Objection.

4 A. I think it's a collection that's --
5 of the work that was filed without proper
6 notices.

7 Q. And I'd like you to tell me --
8 identify particular works you're talking about.

9 MR. MINCH: Objection.

10 A. I can't identify those specific
11 works at this moment in time.

12 Q. Let's turn to what has been
13 previously marked as Roesler 2. It's the Third
14 Amended Complaint. Turn to paragraph 22, sir.
15 It's on page 5. Can you read that into the
16 record?

17 A. "Shaws asserted either by itself
18 or through Bradford that it possesses valid,
19 enforceable copyrights pursuant to Copyright
20 Act 17 USC, Section 101, in each and every
21 photograph that constitutes the Monroe/Shaw
22 photographs in the Shaw limited edition
23 Marilyn/Norma Jean collection, hereinafter the
24 Shaw collection."

25 Q. Thank you. What was the basis for

1 ROESLER

2 that?

3 MR. MINCH: Objection.

4 MS. COLBATH: Objection.

5 Q. Let me rephrase. What is the basis
6 for that statement?

7 MR. MINCH: Objection.

8 A. I believe the basis is that
9 representations that Bradford makes with
10 respect to the collection.

11 Q. Well, what representations are you
12 talking about?

13 MR. MINCH: Objection.

14 MS. COLBATH: Objection.

15 A. I don't have specific information.

16 Q. You don't have specific information
17 of representations that Bradford has made;
18 correct?

19 A. That's correct.

20 Q. Nor do you have specific
21 representations that the Shaw Family Archives
22 made; correct?

23 MR. MINCH: Objection.

24 A. I personally don't.

25 Q. Nor do you have specific

1 ROESLER

2 representations that were made by Edith -- that
3 may have been made by Edith Marcus or Meta
4 Stevens; correct?

5 MR. MINCH: Objection.

6 A. That's correct. I don't.

7 Q. Let's look at paragraph 23. If you
8 could read that, sir.

9 A. "In 1999 the United States
10 District Court for the Southern District of New
11 York ruled in the case of Shaw v. Rizzoli
12 International Publishing, No. 96 Civil - 4259
13 JFK SDNY, that certain photographs that
14 comprise the Monroe/Shaw photographs and/or the
15 Shaw collection and that were published in the
16 book entitled 'Marilyn Monroe, The Life, the
17 Myth,' quotes, 'the Rizzoli works,' have
18 entered the public domain.

19 "In that case the Honorable John G.
20 Cotell ruled that the copyrights in the Rizzoli
21 works expired and such photographs entered the
22 public domain and no renewals were obtained
23 with respect to them."

24 Q. Thank you, sir. What is the basis
25 for that statement?

1 ROESLER

2 MR. MINCH: Objection.

3 A. I don't know. The attorneys
4 drafted -- handling the case drafted that. I
5 don't specifically know.

6 Q. Let's look at paragraph 24. If you
7 could read that into the record, please.

8 A. "Upon information and belief there
9 are photographs other than the Rizzoli works
10 that comprise the Monroe/Shaw photographs
11 and/or the Shaw collection that were published
12 prior to January 1, 1964 and for which
13 copyright renewals were not obtained during the
14 final year of the initial 28-year copyright
15 term for such works.

16 "Accordingly, upon information and
17 belief, such other photographs similarly
18 entered the public domain."

19 Q. What was the basis for making that
20 statement?

21 MR. MINCH: Objection.

22 A. I'm assuming this was the various
23 photographs that were published without notice.

24 Q. You say you're assuming that. But
25 you don't know that to be a fact, do you?

1 ROESLER

2 MR. MINCH: Objection.

3 MS. COLBATH: Objection.

4 A. That would be my educated
5 assumption.

6 Q. You don't know that to be a fact,
7 do you?

8 MR. MINCH: Objection.

9 MS. COLBATH: Objection.

10 A. It would be my belief, yes. My
11 belief.

12 Q. Your belief based on what?

13 MR. MINCH: Objection.

14 A. Based upon the manner of research
15 that the attorneys did when they filed this.

16 Q. Putting aside what your attorneys
17 may have told you or not told you, do you have
18 any independent basis to believe what is
19 contained in paragraph 24?

20 A. Well, other than what my attorneys
21 have told me? My own personal knowledge of
22 photographs that were published prior to 1964
23 in which copyright renewals were not obtained.
24 Yes, my legal conclusion is, those images are
25 in the public domain, independent of what

1 ROESLER

2 attorneys that drafted this told me.

3 Q. Let's talk about that, then. What
4 photos are you talking about?

5 A. Well --

6 MR. MINCH: Objection.

7 A. There exist photos other than the
8 Rizzoli works. Photos that were contained in
9 the various periodicals that we keep talking
10 about, that we go back to, such as Photoplay.

11 Q. Can you identify any of those
12 photographs, sitting here today?

13 MR. MINCH: Objection.

14 A. We go back to the same discussion.

15 Q. Same discussion, meaning you can't
16 identify the particular photographs; correct?

17 MR. MINCH: Objection.

18 MS. COLBATH: Objection.

19 (Discussion off the record.)

20 Q. You can't identify the particular
21 photographs; correct?

22 MS. COLBATH: Objection.

23 MR. MINCH: Objection.

24 A. At this moment, that's correct.

25 Q. You can't identify what photographs

1 ROESLER

2 were purportedly obtained -- published in the
3 photo op publications sitting here today --

4 MR. MINCH: Objection.

5 MS. COLBATH: Objection.

6 A. Sitting here at this moment, that's
7 correct.

8 Q. So in fact you really don't have
9 any personal knowledge of the information
10 contained in paragraph 24, do you?

11 MR. MINCH: Objection.

12 MS. COLBATH: Objection.

13 A. That's incorrect.

14 Q. Again, what is the personal
15 knowledge, so we're clear?

16 MR. MINCH: Objection.

17 A. My knowledge of the photographs
18 that have been published.

19 Q. Which you can't identify.

20 MR. MINCH: Objection.

21 MS. COLBATH: Objection.

22 A. At this moment.

23 Q. Look at paragraph 25. Read that
24 into the record, please, sir.

25 A. "For example, in 1955 Ballantine

1 ROESLER

2 Books published a book entitled 'Marilyn Monroe
3 As the Girl,' featuring over 100 photographs of
4 Marilyn Monroe that were taken by Sam Shaw.

5 "Upon information and belief, Mr.
6 Shaw registered his copyright in this work in
7 the Library of Congress in 1955 under
8 registration No. A 193450 but failed to renew
9 such copyright during the final year of the
10 initial 28-year copyright term for such work or
11 at any time.

12 "As a result, the copyright for
13 this work expired in 1983 and photographs
14 contained in this work fell into the public
15 domain."

16 Q. What's the basis for the
17 information in that paragraph?

18 MR. MINCH: Objection.

19 MS. COLBATH: Objection.

20 A. I believe research at the law firm
21 that handled this did.

22 Q. Do you have any of your own
23 personal knowledge or information contained in
24 this paragraph?

25 A. No.

1 ROESLER

2 MR. MINCH: Objection.

3 Q. If you look at paragraph 26. Read
4 that into the record, please.

5 A. "Further, on information and
6 belief, other photographs that comprise the
7 Monroe/Shaw photographs and/or the Shaw
8 collection were initially published without
9 copyright notice prior to March 1, 1989 when
10 notice was required under the United States
11 Copyright Act, and these photographs also have
12 been in the public domain."

13 Q. What's the basis for that
14 statement, sir?

15 MR. MINCH: Objection.

16 A. The same. Knowledge of the various
17 photographs that were published by the various
18 periodicals and publications.

19 Q. Right. And other than what you've
20 testified, you have nothing else to add?

21 A. That's correct.

22 Q. And the same answer for 27?

23 MS. COLBATH: Objection.

24 Q. You don't have any personal
25 knowledge but rely on your attorneys for that

ROESLER

information?

MR. MINCH: Objection.

MS. COLBATH: Objection.

Q. Is that right?

A. That's correct.

Q. Looking at -- continue on into
Count 1. Well, let's -- strike that.

Turn to page 1, please, sir.

MR. MINCH: Are we still working on
Exhibit --

Q. What is identified as page 1 of the
Third Amended Complaint.

MR. MINCH: That's Roesler 2;
correct?

MR. SERBAGI: That's correct.

Q. Paragraph 4. Do you see that?

A. I'm sorry? Paragraph 4?

Q. Yes.

A. On page -- okay. Yes.

Q. What's marked as 1.

A. Okay.

Q. Look at the second sentence there,
please. I'm going to read that into the
record.